IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13895 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RATILAL PREMJIBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 11 - Respondent(s)

==========

Appearance :
MR KIRTIDEV R DAVE for Petitioner(s) : 1,MR RAHUL K DAVE for Petitioner(s) : 1,
MR MIHIR JOSHI, ADDL. ADVOCATE GENERAL WITH SHRI AJ DESAI, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 6,8 - 12.
MR MK VAKHARIA for Respondent(s) : 7,

==========

CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 20/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned Counsel Shri Dave for the petitioner, learned Additional Advocate General Shri Mihir Joshi, instructed by learned AGP Shri Desai, for the respondents No.1 to 3 and Shri M.K. Vakharia for respondent No.7, appearing on Caveat.

The petitioner has challenged, in this petition, the impugned order dated 1.7.2006 passed by the Respondent No.2 dismissing his Appeal/Election Petition No.9 of 2006. He has also prayed to declare the election of the Executive Committee of APMC, Kathlal – Respondent No.4, held on 23.3.2006, and the result thereof, declared on 24.3.2006, as null and void. It is also prayed that the respondent – Authority be restrained from holding the election for the post of President and Vice President of Respondent – Kathlal APMC during the pendency and final disposal of the petition. The election for the post of President and the Vice President of respondent No.4 – APMC is kept tomorrow.

Shri Dave for the petitioner raised following submissions :

that he was not allowed to remain present at the time of counting by the Election Officer, therefore, the whole election process is vitiated.

Learned Addl. Advocate General Shri Joshi, however, submitted that in fact he never remained present at the time of counting and at the last minutes when the boxes, in which the votes were kept, were removed from the strong room, at that time only the petitioner came. Therefore, now he can not make grievance that he was not allowed to remain present

at the time of counting. This very contention was raised before the Director in Election Petition No.9 of 2006, filed by the petitioner and considering the Rojkam, the Director has rejected this contention and rightly so.

Shri Dave then submitted that the impugned order (Annexure:J) passed by the Director is vitiated as without considering the record or the evidence his Election Petition/Appeal is dismissed by the Director by not taking into consideration the submission of the petitioner the Election Officer had wrongly cancelled the 10 Votes as invalid. It is true that no evidence was led in this matter in the Election Petition/Appeal, filed by the petitioner. But, looking to the urgency involved in the matter and considering the earlier order dated 21.6.2006 passed by this Court in Special Civil Application No.11840/06 the Director had proceeded to decide the Election Petition/Appeal on the material placed before him. This contention of the petitioner was rejected by the Director on the ground that at the time of counting of votes the petitioner was not present and in absence of any mistake committed while cancelling those votes now his submission cannot be accepted that those 10 votes were wrongly cancelled. We are in complete agreement with this reason assigned by the Director.

Shri Dave then submitted that the Director had not properly considered the submission made by the petitioner before him that recounting was not granted by the Election Officer. It clearly appears from the impugned order passed by the Director that in absence of any written objection raised by the petitioner

before the Election Officer such contention cannot be entertained in Appeal.

Lastly, it was submitted by Shri Dave that one Shri Sursinhji Chehraji Rathod was not the member of the Mandali, who has casted his vote, therefore, the election process is vitiated. This contention of the petitioner was rejected by the Director on two grounds, viz. (i) that at the relevant point of time neither the applicant nor any other person has objected about it and (ii) that Shri Rathod was the member of the Mandli was amply proved from the receipt and the result of the Mandli produced by the respondent.

It may be stated that the petitioner has lost the election by the margin of two votes, therefore, one vote of Shri Rathod would not make any difference.

Learned Addl. Advocate General Shri Joshi for the respondent – State of Gujarat and the Authorities vehemently submitted that though this petition is labelled as the petition both, under Article 226 and 227 of the Constitution of India, strictly speaking, it is a petition under Article 227 of the Constitution and judicial review of the impugned order passed by the Director is not permissible under the law as finality is attached to the decision of the Director. Such a decision can only be questioned only on two grounds, (i) malafide and (ii) jurisdiction. He submitted that admittedly, in this case, the Director had jurisdiction to decide the Election Petition/Appeal of the petitioner which he has decided in accordance with law and against any allegation of malafide this Court should not

interfere with such order in its supervisory jurisdiction under Art. 227 of the Constitution.

In catena of decision the Hon'ble Supreme Court has laid down that the scope of judicial review is very limited. It is no doubt true that in the case of KIHOTO HOLLOWHAN v/s. ZACHILLHU AND OTHERS, reported in 1992 Supp (2) SCC 651, the Hon'ble Supreme Court has held that ..”The finality clause does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution.” But, at the same time, it does have the efect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires or not. When the order passed is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action is ultra-vires. The powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant considerations, then it would be ultra-vires.

We have dealt with each and every submissions made by Shri Dave, learned Counsel for the petitioner, and having carefully gone through the impugned order passed by the Director, we do not see any colourable exercise of power on the part of the Director in dismissing the Election Petition/Appeal filed by the petitioner or the Director has acceded his jurisdiction while deciding Appeal of the petitioner. In that view of the matter we would not like to interfere with such order passed by the

Director in his supervisory jurisdiction under Article 227 of the Constitution.

In view of the above, the petition is summarily dismissed. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

sas